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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,078	02/27/2004	Steven J. Wygant	BEL0005.US	7269

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EXAMINER

CHAMBERS, TROY

ART UNIT

PAPER NUMBER

3641

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/789,078

Applicant(s)

WYGANT, STEVEN J.

Examiner

Troy Chambers

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: Request for Information.

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-22, in the reply filed on 07/11/05 is acknowledged.
2. Claim 23 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 07/11/05.

Drawings

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the exhaust vent (element 52), a trigger safety mechanically connected to a trigger, an electrically actuated piston, a magnetically actuated piston, an electro-magnetically actuated piston, a chemically actuated piston (claim 18) and a landmine (claim 19) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Specifically, the specification does not disclose how or in what manner element 50 operates as "safety" mechanism.

7. Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

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Specifically, the specification does not disclose how or in what manner the piston is at least chemically actuated.

8. Claim 19 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification does not disclose how or in what manner the pneumatic shooting device operates as a landmine.

9. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, it is not known what is meant or encompassed by the phrase "abrupt pneumatic orifice".

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-5, 7-9 and 12-20 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. 5769066 issued to Schneider. Schneider discloses a pneumatic shooting device 10.

12. With respect to claim 1, Schneider discloses a pneumatic shooting device comprising:

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- a. a barrel 72;
- b. an action including:
 - i. a housing 12,
 - ii. a pressure réservoir 109,
 - iii. a discharge outlet (bore of 109),
 - iv. a linear body 32,
 - v. a piston 40.

Upon return of the piston to the reward position, the discharge outlet is closed to a source of pressurized gas (col. 5, ll. 66 to col. 6, ll. 6).

13. With respect to claim 2, Schneider discloses a piston 40 having an actuating end (left end), and an actuating reservoir 134a.

14. With respect to claim 3, Schneider discloses a source of pressurized gas (col. 3, ll. 38-41).

15. With respect to claim 4, Schneider discloses:

- c. a supply fitting 26,
- d. an actuator fitting 28,
- e. a slip ring 30.

16. With respect to claim 5, Schneider discloses an exhaust vent 118.

17. With respect to claim 7, Schneider discloses piston 40 have a radial seal provided by element 70 (Fig. 22) and element 77 (Fig. 23).

18. With respect to claim 8, Schneider discloses a barrel interface 22 and a face seal (see Fig. 22).

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19. With respect to claim 9, Schneider discloses a regulator 44 and tubing (Figs. 7-10).
20. With respect to claim 12, Schneider discloses a pressure relief valve 46.
21. With respect to claim 13, refer to any one of Figs. 22-24 which discloses a breech at the end of barrel 74, the balls B being loaded at said breech.
22. With respect to claim 14, refer to col. 2, ll. 29-32.
23. With respect to claim 16, refer to the rejection of this claim under 35 USC 112(2) above and Figs. 22-24 of Schneider.
24. With respect to claim 17, refer to any one of Figs. 22-24.
25. With respect to claim 18, the piston 40 operates in response to gas pressure.
26. With respect to claim 19, Schneider discloses a gun 10.
27. With respect to claim 20, refer to any one of Figs. 22-24 which shows linear body 32 attached to pressure reservoir 109.
28. With respect to claim 21, refer to the rejection of claim 1.
29. With respect to claim 22, refer to the rejection of claim 2.

Claim Rejections - 35 USC § 103

30. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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31. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider in view of US 2004/0200466 issued to Salva. Schneider discloses a pneumatic shooting device as discussed above including a trigger 80. However, Schneider does not disclose a trigger safety. Salva discloses such a trigger safety comprising a safety catch [0026]. At the time of the invention, one having ordinary skill in the art would have found it obvious to provide the shooting device of Schneider with the safety catch of Salva. The suggestion/motivation for doing so would have been to prevent the unintended firing of the gun. Moreover, the Examiner takes Official Notice that trigger safeties are well known in the art.

32. Claims 10, 11, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider. Schneider discloses a pneumatic launching device as discussed above. However, Schneider does not disclose the burst ratios and diameter ratios claimed by the applicant. The Examiner notes that the specification contains no disclosure of either the critical nature of the claimed dimensions or any unexpected results arising therefrom, and as such, the ratios are arbitrary and obvious. At the time of the invention, one having ordinary skill in the art would have found it obvious to provide the launcher of Schneider with the claimed ratios since it has been held that where patentability is said to be based upon particular chosen dimensions or upon another variable recited in a claim, the applicant must show that the chosen dimensions are critical. In re Woodruff, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990).

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Conclusion

33. This Office action has an attached requirement for information under 37 CFR

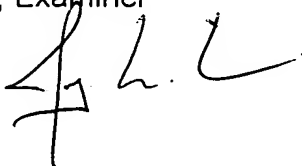
1.105. A complete reply to this Office action must include a complete reply to the attached requirement for information. The time period for reply to the attached requirement coincides with the time period for reply to this Office action.

34. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited on form PTO-892 are cited as of interest to show similar pneumatic launching devices.

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Chambers whose telephone number is (571) 272-6874 between the hours of 7:00 a.m. to 3:30 p.m., M-F. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Carone, can be reached at (571) 272-6873.

36. A response which includes amendments to the claims without an express showing of support in either the specification, drawings or both will be deemed non-responsive.

Troy Chambers, Examiner

A handwritten signature in black ink, appearing to be 'T. Chambers', written over the printed name.

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Requirement for Information

37. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

38. An issue of public use or on sale activity has been raised in this application. In order for the examiner to properly consider patentability of the claimed invention under 35 U.S.C. 102(b), additional information regarding this issue is required as follows: The Examiner has enclosed a copy of the internet publication entitled WEAPONRY (<http://web.archive.org/web/20031008160938/http://www.bp-usa.com/weaponry.htm>), disclosed 10/08/2003) in which a pneumatic launcher called the Alias MKX TM is disclosed. The Examiner has reason to believe that the applicant is an employee or owner at Blackpoint Engineering and that the MKX is the same gun as claimed by the applicant. If the Examiner's assertions are correct, the Applicant is requested to supply information related to: 1) the earliest date that the MKX (or claimed device) was made available to the public (e.g. earliest offer for sale and earliest public disclosure via tradeshow or paintball exhibitions); and, 2) any documents, drawings or admissions disclosing the operational and structural details of the MKX. *to the public.*

Applicant is reminded that failure to fully reply to this requirement for information will result in a holding of abandonment.

39. In response to this requirement, please agree or disagree to the stipulation of each of the following assertions of facts:

- Applicant is an owner/employee of Blackpoint Engineering, LLC.

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- The Alias MKX TM is the same gun as is disclosed and claimed by the applicant.
- The Alias or claimed device was disclosed to the public more than one year before the filing date of the instant application.
- The Alias or claimed device was disclosed to the public less than one year before the filing date of the instant application.

40. In response to this requirement, please provide the names of any products or services that have incorporated the claimed subject matter.

41. The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained may be accepted as a complete reply to the requirement for that item.

42. This requirement is an attachment of the enclosed Office action. A complete reply to the enclosed Office action must include a complete reply to this requirement. The time period for reply to this requirement coincides with the time period for reply to the enclosed Office action.


MICHAEL J. CARONE
SUPERVISORY PATENT EXAMINER